

September 6, 2001

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION ON APPEAL OF NOTICE AND ORDER

SUBJECT: Department of Development and Environmental Services File No. **E0001662**

ANTHONY SPAKOWSKY
Code Enforcement Appeal

Location: 12404 Cove Road Southwest

Appellant: **Anthony Spakowsky**
P.O. Box 867
Vashon, WA 98070

King County: Department of Development and Environmental Services
Building Services Division, *represented by*
Erroll Garnett, Code Enforcement Section
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7102
Facsimile: (206) 296-7055

DECISION SUMMARY:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	August 23, 2001
Hearing Closed:	August 23, 2001

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

KEY WORDS:

- ABC Permit
- Building Permit

SUMMARY:

Denies appeal from code enforcement action regarding lack of water, lack of septic system and lack of permits for same.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **Notice and Order Served.** On June 14, 2001, the Department of Development and Environmental Services ("Department" or "DDES") issued a notice and order to Anthony Spakowsky concerning his property at 12404 SW Cove Rd., identified in the King County Tax Assessor documents as parcel number 2523029096. The notice and order cites Appellant Spakowsky for construction and occupation of a residence without the required permit approvals and inspections. The principal permit of concern is the ordinary building permit, required by KCC 16.04.098 and Uniform Building Code (UBC) Section 106.1 (1997), adopted by the King County Council. However, in order to obtain a building permit, an applicant first must obtain Seattle-King County Department of Public Health approval of the water source and the septic treatment system.

Citing Uniform Housing Code Sections 102, 103, 201, 202, 205, 505, 504, 701, 1001.1, 1001.2 and 1001.14, the notice and order commands Appellant Spakowsky to "Cease occupation of the residence" by a specified date and to apply for/obtain the required permit approval for the residence by August 30, 2001. As an alternative to obtaining the required permits, the notice and order also provides "demolish and remove structure" as an option.

2. **Appeal Filed.** Anthony J. Spakowsky (the "Appellant") asserts that he is the sole owner of the property at issue. His grounds for appeal are these:
 - Although King County has brought code enforcement action against this Appellant, it has brought no action against other building or zoning code violations in the same neighborhood.
 - The Appellant asserts that he lacks sufficient funds to complete the building permit application and implementation process. He receives "general assistance" income.
 - The Appellant argues that he has been allowed insufficient time to achieve compliance with the notice and order.
3. **Representation declined.** The Appellant is under the care of the Highland Mental Health Center, located in Burien, for the treatment of mental illness (Exhibit #3). However, the Appellant testifies that he understands that he has the right to be represented by an attorney in these proceedings. However, he declines representation due to the cost.
4. **Septic and Water Approval.** Before a building permit application is accepted as "complete," it must be accompanied by a Certificate of Water Availability and Public Health Department approval of the septic system design. The process for obtaining septic system design approval may take several months. In some cases, for instance, "wet weather conditions" are required for percolation rate tests. In addition, a neighboring property owner testifies that the private water

association within whose boundaries the subject property lies will be granting “no more water shares”. Although this testimony is not necessarily final and determinative, it certainly suggests that additional time is necessary to explore this option. The Department, however, states that “Mr. Spakowsky first knew of the problems he would have with obtaining water and septic approval at the site when he first purchased the property.” Further, the Department observes, although the notice and order was issued June 14, 2001, Mr. Spakowsky was first advised of the violations on November 6, 2000, ten months ago.

5. **Stop Work Order Required.** Code Enforcement Officer Erroll Garnett testifies that, based upon complaints received July 23, 2001 and his observations of structural additions (for which photographs were taken) during his site visit of August 9, 2001, Appellant Spakowsky continued to work on the structure at issue well after issuance of the June 14, 2001 notice and order. Mr. Spakowsky does not rebut this testimony. Consequently, Officer Garnett testifies he issued a stop work order on August 9, 2001. Mr. Garnett and Appellant Spakowsky agree that no additional work has occurred since the stop work order was issued.
6. The Department’s report to the Examiner, Exhibit No. 1, is adopted and incorporated here by this reference.

CONCLUSIONS:

1. Code enforcement investigations in King County are initiated only in response to complaints. Complaints about other structures in this neighborhood would be investigated in the same manner as this case. Such practices, however, do not invalidate those code enforcement actions taken. There is no evidence of any procedural due process error in this case.
2. The time required to obtain a building permit, especially if wet seasons tests are required, would appear to make the compliance period contained in the June 14, 2001 notice and order to be unreasonably short – just as argued by Appellant Spakowsky. In order to obtain, or to provide opportunity to obtain, water source and septic design approval, the compliance period should be lengthened. The order below implements this conclusion.
3. The preceding conclusion notwithstanding, the appeal must be denied. The preponderance of the evidence fully supports the fact that the Appellant is maintaining a residential structure without any approved water source or septic system on the subject property for some time. The testimony of record shows that the Appellant does not contest this fact.

DECISION:

The appeal of Anthony J. Spakowsky is DENIED. However, the order below will provide a more reasonable time to obtain the requisite permits and approvals required prior to permit application.

ORDER:

- A. No later than March 28, 2002, Appellant Anthony J. Spakowsky shall file a complete building permit application, including approval of water source and septic design approval from the Public Health Department.

- B. Appellant Anthony J. Spakowsky shall comply with paragraph A. of this order or shall incur an initial penalty of \$800. Failure to comply by April 30, 2002 will result in an additional \$1,200 penalty; by May 16, \$1,600.
- C. The Department may proceed to abate the residential use of the premises and structures lacking required permit approvals following the final deadline contained in paragraph B. of this order. This Order does not limit in any manner the lawful prosecution of this case by DDES and the King County Prosecutor's Office.

ORDERED this 6th day of September, 2001.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 6th day of September, 2001, to the following parties and interested persons:

Anthony Spakowsky
P.O. Box 867
Vashon WA 98070

Roger Bruckshen
DDES/BSO
Code Enforcement Section
MS OAK-DE-0100

Elizabeth Deraitus
Code Enforcement Supervisor
DDES/
OAK-DE-0100

Erroll Garnett
DDES/BSO
Code Enforcement Section
MS OAK-DE-0100

Heather Staines
DDES/BSO
Code Enforcement-Finance
MS OAK-DE-0100

Jolene Lamb
12412 SW Cove Rd.
Vashon, WA 98070

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE AUGUST 23, 2001 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO: E0001662

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Erroll Garnett. Participating in the hearing and representing the Appellant was Anthony Spadowsky. Jolene Lamb also participated in this hearing.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Staff report to Hearing Examiner
- Exhibit No. 2 Copy of Notice and Order issued
- Exhibit No. 3 Copy of appeal received
- Exhibit No. 4 Violation Notice sent November 6, 2000
- Exhibit No. 5 Violation Notice sent February 14, 2001
- Exhibit No. 6 E-mail received from Dave Koperski February 13, 2001
- Exhibit No. 7 E-mail received from Dave Koperski April 5, 2001
- Exhibit No. 8 Copy of Stop Work Order
- Exhibit No. 9 Photos from site visits
- Exhibit No. 10 Land report from Jolene Lamb
- Exhibit No. 11 Drawings from Mr. Spakowsky